

NO. 47689-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CHARLES SATIACUM III, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge Phillip Sorenson

No. 14-1-05106-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was any error in admitting the challenged statement harmless when it only provided cumulative evidence of reckless driving and identified one person among many who were endangered by Defendant's actions in attempting to elude pursuing police officers?

B. STATEMENT OF THE CASE.

1. Procedure

The State charged Charles Satiacum (hereinafter "Defendant") with one count of attempting to elude a police vehicle (RCW 46.61.024), one count of obstructing a law enforcement officer (RCW 9A.76.020), and one count of resisting arrest (RCW 9A.76.040). CP 4-5. The charge of attempting to elude a police vehicle included an endangerment enhancement pursuant to RCW 9.94A.834. CP 4.

Defendant proceeded to trial on all three counts. 4/2/2015 RP 4. During trial, the State sought to admit a statement made by a civilian witness to Officer David Johnson of the Tacoma Police Department. RP2 120. The civilian witness did not testify at trial. The trial court held a voir dire examination of Officer Johnson where he testified regarding the circumstances surrounding the statement now challenged on appeal. RP2 122-127. Defendant objected to the admission of the statements as a

violation of the confrontation clause and the United States Supreme Court's holding in *Crawford v. Washington*.¹ RP2 121-122. Despite Defendant's *Crawford* objection, the trial court did not rule on whether the statements were testimonial in nature. RP2 127-130. Instead, the trial court ruled that the statements were admissible as they fell into the "excited utterance" exception to the general prohibition on hearsay. RP2 130.

A jury found Defendant guilty as charged on all three counts and answered "yes" to the question of whether Defendant endangered anyone other than himself or the pursuing police officers on the special verdict form for the endangerment enhancement. CP 17-20. At sentencing, both the State and defense counsel recommended a prison-based DOSA sentence. RP4 394-396. Defendant was sentenced to a standard range prison-based DOSA sentence. RP4 401-402. Defendant filed a notice of appeal. CP 88-103.

2. Facts

During the evening of December 20, 2014, several officers from the Tacoma Police Department were conducting an ongoing investigation and had identified a suspect vehicle. RP2 98; RP2 132; RP2 164. The suspect vehicle was described as a dark green Ford Taurus. RP2 98; RP2 134. Officer Brian Hudspeth located the suspect vehicle traveling

¹ 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

westbound on East 36th Street at McKinley Avenue. RP2 99. Officer Hudspeth approached the vehicle from behind without activating his lights or sirens. RP2 101. Officer Hudspeth was able to observe persons sitting in the two front seats of the vehicle, and initially believed a third person was in the backseat. RP2 101-102. However, after stopping behind the vehicle at an intersection, Officer Hudspeth was able to determine that there were only two people in the vehicle and they were sitting in the driver's seat and front-right passenger seat. RP2 102.

The suspect vehicle turned northbound on Pacific Avenue. RP2 102. As the vehicle approached a transit bus, it swerved into the left lane while signaling halfway through the lane change. RP2 103. The vehicle then swerved back to the right lane while signaling halfway through the lane change. RP2 103. At this point, other officers arrived on the scene and Officer Hudspeth initiated a traffic stop by turning on his emergency lights, getting out of his patrol car, and using his P.A. system to order the driver of the suspect vehicle to turn the car off as it was stopped at a red light. RP2 103. The suspect vehicle instead turned eastbound onto 25th Street and began to travel at speeds in excess of 50 miles per hour. RP2 107-108.

As the suspect vehicle was traveling on 25th Street in a "No Passing" zone, it swerved into the oncoming lanes of traffic to avoid

another vehicle and ran a red light without stopping or slowing to check for traffic. RP2 109. The suspect vehicle continued to travel on 25th Street at an increasing speed, eventually reaching 90 miles per hour. RP2 109. The suspect vehicle approached Portland Avenue where another vehicle was waiting at a stop sign. RP2 110. The suspect vehicle swerved around the car waiting at the stop sign and proceeded onto Portland Avenue without stopping. RP2 111.

Officer Hudspeth lost sight of the suspect vehicle after it turned onto Portland Avenue, but it was later located by Officer David Johnson at “L” Street and Puyallup Avenue. RP2 113; RP2 136. Officer Johnson then verified that it was the same vehicle by confirming its license plate number. RP2 138. As Officer Johnson approached the suspect vehicle, it accelerated away from him while weaving between traffic traveling in the same direction. RP2 139-140. Officer Johnson activated his emergency lights and siren and continued the pursuit of the suspect vehicle as it turned onto northbound Pacific Avenue. RP2 139-140.

As the suspect vehicle traveled northbound, it swerved to the right up onto the train tracks that bisect Pacific Avenue to avoid traffic. RP2 143-144. After it had passed the traffic, the suspect vehicle swerved back to the left off of the train tracks and landed back on the roadway, emitting sparks as it landed on the street. RP2 144. The suspect vehicle ran a red

light at Pacific Avenue and 15th Street before speeding through a busy pedestrian area between the 700 and 900 blocks of Pacific Avenue that has a speed limit of 25 miles per hour. RP2 146-147. Officers estimated that the suspect vehicle was traveling in excess of 70 miles per hour through this area. RP2 147.

As the pursuing police officers were delayed by traffic and red lights on Pacific Avenue, they temporarily lost sight of the suspect vehicle. RP2 212. The officers began to search for the vehicle again, and Officer Zachery Wolfe continued on Pacific Avenue until it turned into northbound Schuster Parkway. RP2 214. After traveling for about a mile, Officer Wolfe observed a green sedan that had gone completely off of the road and crashed on the railroad tracks running parallel to Schuster Parkway. RP2 215-216. Officer Wolfe also observed two individuals running away from the crashed vehicle on foot. RP2 216. Officer Wolfe then pursued the two fleeing suspects on foot as they ran towards Commencement Bay. RP2 218-219.

Officer Wolfe detained one of the suspects on the beach while the other suspect, later identified as Defendant, ran into the water. RP2 219. Defendant ran into the water and began to swim east away from shore. RP2 177. Defendant continued swimming as officers on shore ordered him to return to land. RP2 178. Defendant made it about 100 feet out to sea

before he turned around and came back towards the shore. RP2 178.

Defendant stopped about 15 feet away from the beach where he could touch the ground and officers again ordered him to return to shore. RP2 179. Defendant stayed in the water, and officers ultimately had to wade into the bay and escort him back to shore. RP2 180.

As he was being brought to shore, Defendant attempted to pull away from officers in the shallow water. RP2 181. He was eventually placed on the ground, but resisted being handcuffed by placing his hands underneath his body. RP2 183-185. Officers were eventually able to handcuff Defendant and he was taken into custody. RP2 185. Defendant claimed he was the passenger during the pursuit. RP2 225. However, the other person in Defendant's vehicle also claimed to have been the passenger and several officers noticed bruising and abrasions about the width of a seatbelt stretching from Defendant's left shoulder to his right hip, which is consistent with having been in the driver's seat during a collision. RP2 225-226; RP2 259; RP2 286. Defendant was treated at a local hospital before being booked. RP2 256.

C. ARGUMENT.

1. EVEN IF THE CHALLENGED STATEMENT IS TESTIMONIAL AND ADMITTING IT WITHOUT SUBJECTING THE DECLARANT TO CROSS-EXAMINATION WAS ERROR, THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT.

The confrontation clause grants criminal defendants the right to confront witnesses against them. U.S. Const. amend. VI. A defendant's right of confrontation is limited to those witnesses who offer testimonial statements against them. *State v. Jasper*, 158 Wn. App. 518, 526, 245 P.3d 228 (2010) (citing *Crawford*, 541 U.S. at 51). Alleged violations of the confrontation clause are reviewed de novo. *State v. Mason*, 160 Wn.2d 910, 922, 162 P.3d 396 (2007) (citing *State v. Price*, 158 Wn.2d 630, 638-39, 146 P.3d 1183 (2006)). Violations of the confrontation clause are subject to a harmless error analysis. *State v. Shafer*, 156 Wn.2d 381, 395, 128 P.3d 87 (2006).

Under *Crawford*, an out-of-court testimonial statement may not be admitted unless the declarant is unavailable to testify and the defendant had a prior opportunity for cross-examination. *Crawford*, 541 U.S. at 68. This rule applies regardless of whether the statements falls into a hearsay exception. *State v. Moses*, 129 Wn. App. 718, 724, 119 P.3d 906 (2005) (citing *Crawford*, 541 U.S. at 63). Thus, the issue of whether a challenged out-of-court statement is testimonial must be resolved before addressing

potential hearsay exceptions. In this case, the trial court did not make a ruling on whether the challenged statement was testimonial. RP2 129-130. Therefore, it is not possible to discern the trial court's reasoning for overruling Defendant's *Crawford* objection from the record on appeal. However, even if the trial court erred by admitting the statement without first determining whether it was testimonial, the error was harmless beyond a reasonable doubt.

A violation of the confrontation clause does not require reversal if the State can show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Jasper*, 174 Wn.2d 96, 117, 271 P.3d 876 (2012) (quoting *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)). In this case, the State presented ample evidence for the jury to return a verdict of guilty on all counts and answer "yes" on the special verdict form even if the challenged statement had been excluded from evidence.

The challenged statement only concerns the count of attempting to elude a pursuing police vehicle and its accompanying endangerment enhancement as it does not contain any information on Defendant's interactions with law enforcement. The witness told Officer Johnson that he had been traveling northbound on Schuster Parkway while another vehicle was traveling the same direction in the left lane. RP2 152.

Defendant's vehicle approached them from behind at a high rate of speed. RP2 152. Defendant then squeezed his vehicle between the two cars, missing them by about a foot. RP2 152. The witness also told Officer Johnson that he saw Defendant's vehicle fly off the roadway towards the train tracks, but he lost sight of it after that. RP2 152.

To convict Defendant of attempting to elude a police vehicle, the State must prove that (1) uniformed officers in a marked police car gave Defendant a visual or audible signal to stop his vehicle, (2) Defendant willfully refused to bring his vehicle to an immediate stop, and (3) Defendant drove in a reckless manner while attempting to elude the pursuing police vehicles. RCW 46.61.024(1). As the challenged statement only discusses the manner in which Defendant was driving, it is only relevant to the third element of the charge.

The jury was presented with several other examples of Defendant's reckless driving while eluding the pursuing officers. The jury heard testimony from three different officers who pursued Defendant, and all three testified to multiple instances of reckless driving that occurred during the pursuit. After failing to obey orders to stop the vehicle, Defendant proceeded to drive through the streets of downtown Tacoma at speeds ranging from 70 to 90 miles per hour. RP2 109; RP2 140; RP2 146-147. Defendant also entered the oncoming lane of traffic to pass other

cars, and at one point drove up onto the train tracks bisecting Pacific Avenue before hopping the curb back onto the road. RP2 110-111; RP2 143-144. Finally, Defendant ran several red lights without yielding to traffic over the course of the pursuit. RP2 109; RP2 146; RP2 169. Even excluding the challenged statement, the aforementioned evidence is sufficient to find Defendant guilty of attempting to elude a police vehicle.

The final portion of the jury's verdict is the "yes" answer on the special verdict form asking whether Defendant endangered anyone besides himself or the pursuing officers during the chase. CP 18. On appeal, Defendant asserts that the challenged statement was most prejudicial regarding the special verdict because it identified a specific person who was endangered. Br. of App. at 12. However, admitting the statement is still harmless error because Defendant endangered many people aside from the witness who did not testify at trial.

The most easily identifiable person who was endangered was Defendant's passenger. The entire time that Defendant was speeding, swerving into oncoming lanes of traffic, driving on railroad tracks, and running red lights, a passenger was in the vehicle with him. RP2 102. This passenger was also inside the vehicle when it left the roadway and landed on the railroad tracks. RP2 216. Furthermore, the evidence at trial established that Defendant endangered other motorists and pedestrians

during certain portions of the pursuit. Aside from the instances of reckless driving mentioned above, Defendant also sped through a busy city block where pedestrians were present at nearly triple the speed limit. RP2 147; RP2 170-171. This evidence demonstrated that Defendant endangered several people other than the witness who offered the challenged statement. Thus, the jury had bases to answer “yes” on the special verdict form without ever having heard the challenged statement.

If admitting the challenged statement was error, the error was harmless beyond a reasonable doubt. The record contains ample evidence to convict Defendant on all three counts as charged. Furthermore, the evidence shows that Defendant endangered multiple people during the pursuit. Therefore, admitting a statement that identified one person in particular was harmless as the evidence was cumulative. As any error was harmless beyond a reasonable doubt, Defendant’s conviction and sentence should be affirmed.


D. CONCLUSION.

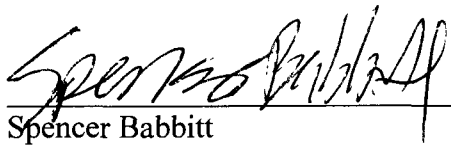
As the challenged statement was volunteered without provocation from police and was provided in response to an ongoing emergency, it is not testimonial in nature and does not implicate the confrontation clause. Furthermore, even if admitting the statement was error, the error was harmless as the jury was presented with ample evidence to reach their

verdict even if the statement had been excluded. Defendant's convictions and sentence should be affirmed.

DATED: February 25, 2016.

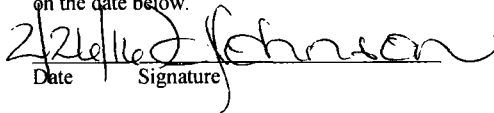
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